

BILL ANALYSIS

Senate Research Center

S.B. 597
By: Duncan
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Enrolled

DIGEST AND PURPOSE

Currently, legal service contracts are regulated by the Texas Department of Insurance. However, the contracts are not considered to be traditional insurance products. S.B. 597 transfers regulation of for-profit legal service contracts to the Texas Department of Licensing and Regulation (TDLR). TDLR has broad enforcement powers over companies and sales representatives who sell legal service contracts. Companies and sales representatives that sell legal service contracts are required to register with TDLR, to post financial security, maintain books and records, and include certain language in contracts.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive director of the Texas Department of Licensing and Regulation in SECTION 1 (Sections 953.005, 953.056, 953.057, and 953.162, Title 5B, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 5, Occupations Code, by adding Chapter 953, as follows:

CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 953.001. DEFINITIONS. Defines “administrator,” “company,” “contracting attorney,” “department,” “executive director,” “financial security,” “legal service contract,” “legal service contract holder,” “person,” and “sales representative.”

Sec. 953.002. EXEMPTIONS. Provides a list of entities and contracts that this chapter does not apply to.

Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. Provides that the sale

of legal service contracts under this chapter are exempt from the Insurance Code and other laws of this state regulating the business of insurance.

Sec. 953.004. PREPAID LEGAL SERVICE CONTRACT PROGRAMS. (a) Requires an insurer who issues or renews prepaid legal service contracts under Article 5.13-1 (Legal Service Contracts), Insurance Code, to notify the commissioner of insurance in writing not later than the 60th day before transferring regulation of the insurer's legal service contracts from the Texas Department of Insurance to the Texas Department of Licensing and Regulation. Provides that an insurer that complies with this section is exempt from the requirements of Articles 21.49-2 (Declination, Cancellation, and Nonrenewal of Certain Policies) 21.49-2A (Cancellation and Nonrenewal of Certain Liability Insurance Coverage), 21.49-2B (Cancellation and Nonrenewal of Certain Property and Casualty Policies), 21.49-2D (Prohibition on Certain Cancellations and Nonrenewals), and 21.49-2E (Requirements for Written Statement of Reason for Cancellation, Declination, or Renewal), and Chapter 827 (Withdrawal and Restriction Plans), Insurance Code.

(b) Provides that the exemptions described by Subsection (a) begin on the date the commissioner receives the notice under Subsection (a) and apply until the insurer registers with the department as required by Section 953.052.

Sec. 953.005. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a) Authorizes the executive director of the Texas Department of Licensing and Regulation (executive director) to investigate a company, administrator, sales representative, or other person as necessary to enforce this chapter and protect legal service contract holders in this state.

(b) Requires a company or sales representative, on request of the executive director, to make the records relevant to the regulation of legal service contracts in this state available to the executive director as necessary to enable the executive director to reasonably determine compliance with this chapter.

(c) Authorizes the executive director, after contacting the company that has contracted with the contracting attorney, to refer a complaint received by the department concerning the performance of a contracting attorney to the State Bar of Texas, the appropriate licensing agency of another jurisdiction, if applicable or any person designated by law to receive complaints from the public concerning the performance of an attorney.

(d) Authorizes the executive director to adopt rules as necessary to implement this chapter.

[Reserves Sections 953.006-953.050 for expansion.]

SUBCHAPTER B. REGISTRATION REQUIREMENTS

Sec. 953.051. **REGISTRATION REQUIRED.** (a) Prohibits a person to operate as a company or sales representative of legal service contracts sold in this state unless the person is registered with the department. Authorizes a company's contract to only be sold by a sales representative who is registered with the department.

(b) Provides that a person who collects commissions for the sale of legal service contracts but who does not actively sell or solicit legal service contracts is not required to register under this subchapter.

Sec. 953.052. **APPLICATION FOR REGISTRATION.** (a) Requires an applicant for registration to submit an application to the department. Requires the application to be in a form prescribed by the executive director.

(b) Provides that an application for registration as a company must include evidence satisfactory to the executive director of compliance with the applicable financial security requirements prescribed by Subchapter C.

(c) Requires an application for registration as a sales representative to include a list of the companies for which the sales representative will sell or solicit legal service contracts.

Sec. 953.053. **FEES.** (a) Requires the executive director to develop a tiered fee schedule of annual registration fees under which a company's registration fee is based on the number of legal service contracts the company sold in this state during the preceding 12-month period. Requires the executive director to set the amounts of the fees required by this subsection to cover the costs of administering this chapter.

(b) Requires the executive director, in addition to the annual registration fee required by Subsection (a), to annually collect from each company a fee equal to the difference between an amount equal to 1.7 percent of the amount a company collects for legal service contracts sold by the company in this state in the current year and the amount the company paid to the state in franchise taxes in the same year. Requires the executive director to establish a schedule and procedure for collecting this fee.

(c) Requires a company to pay the appropriate fees required by this section to be registered.

Sec. 953.054. **INFORMATION CONCERNING NUMBER OF LEGAL SERVICE CONTRACTS SOLD.** Provides that information concerning the number of legal service contracts sold by a company that is submitted under Section 953.053 is a trade secret to which Section 552.110 (Exception: Trade Secrets; Certain Commercial or Financial

Information), Government Code, applies.

Sec. 953.055. ADDITIONAL REQUIREMENTS FOR SALES REPRESENTATIVES.

(a) Authorizes the executive director to deny an application from a sales representative who commits certain acts.

(b) Requires each registered sales representative to pay an annual registration fee in the amount set by the executive director to cover the costs of administering this chapter.

Sec. 953.056. MODIFICATION OF REGISTRATION INFORMATION. Authorizes the executive director to adopt rules regarding the procedures and fees a company or sales representative must follow and pay when requesting a modification to the company's or sales representative's registration information that is on file with the department.

Sec. 953.057. RENEWAL OF REGISTRATION. Requires the executive director to adopt rules for the renewal of a company's or sales representative's registration, including a rule that addresses late renewals.

[Reserves Sections 953.058-953.100 for expansion.]

SUBCHAPTER C. FINANCIAL SECURITY REQUIREMENTS FOR LEGAL SERVICE CONTRACT COMPANIES

Sec. 953.101. FINANCIAL SECURITY REQUIREMENTS. (a) Requires each company to deposit and maintain a form of financial security with the executive director. Requires the financial security deposited with the director to maintain certain market values at all times.

(b) Requires a company that had no gross revenue in this state from the sale of legal service contracts in the preceding year previously generated revenue from the sale of prepaid legal service contracts under Article 5.13-1, Insurance Code, to deposit an amount of financial security based on the revenue generated from the sale of prepaid legal service contracts under the Insurance Code in the preceding year.

(c) Provides that the department is responsible for the safeguarding of financial security deposited with the executive director under this section. Provides that financial security is not subject to taxation and is to be used exclusively to guarantee the company's performance of its obligations to its legal service contract holders.

(d) Authorizes the executive director to order an increase in the amount of

financial security required of a company under this section if the executive director finds that there has been a substantial change in a company, including an increase in the amount of fees the company is charging consumers or an increase in the company's annual gross revenue.

(e) Authorizes a company, not later than the 30th day after the date the executive director orders a financial security increase under Subsection (d), to request a hearing on the issue. Requires the executive director to hold a hearing not later than the 30th day after the date a company requests a hearing.

(f) Provides that if a company does not meet the financial security requirements within a specified time a company's registration may be revoked.

Sec. 953.102. REPLACEMENT OR RENEWAL OF FINANCIAL SECURITY. (a) Requires a company whose financial security under Section 953.101 is issued or written for a specified term, not later than the 90th day before the date the term expires, to replace the financial security or notify the executive director of the company's intention to renew the financial security.

(b) Authorizes the executive director to draw on the company's financial security to the extent necessary to ensure that the company's obligations to its legal service contract holders are met in accordance with this chapter if, not later than the 60th day before the date the term of a company's financial security expires, the executive director does not receive satisfactory notification of a company's renewal or replacement of the financial security.

Sec. 953.103. DURATION OF DEPOSIT OF FINANCIAL SECURITY. Requires the executive director to maintain a company's financial security deposit so long as the company continues to do business in this state. Requires the executive director to release the deposited financial security to the company when a company ceases to do business in this state and furnishes the executive director with satisfactory proof that the company has discharged or otherwise adequately met all obligations to its legal service contract holders in this state.

Sec. 953.104. SUIT ON FINANCIAL SECURITY. (a) Authorizes the state, on behalf of a legal service contract holder injured because of a company's violation of this chapter, to bring a suit for payment from the company's financial security deposit held by the executive director.

(b) Provides that the state is the only party that may bring suit for payment from a company's financial security deposit held by the executive director. Provides that this chapter does not create a private right of action.

(c) Authorizes the state to only seek damages for the cost of the legal services the company failed to provide to a legal service contract holder under the terms of the legal service contract.

(d) Requires the court to determine the amount the executive director is required to pay the consumer from the company's financial security deposit held by the executive director.

Sec. 953.105. ADDITIONAL FINANCIAL SECURITY REQUIREMENTS.

(a) Requires the executive director to annually review:

- (1) the audited financial statements of a company; and
- (2) a certified statement describing the company's reserves, if any.

(b) Requires the statement described by Subsection (a)(2) to be made by an actuary who is a member in good standing of the American Academy of Actuaries.

(c) Authorizes the executive director to require a company to maintain certain reserves in order for the company to obtain or maintain the company's registration, after reviewing the information described by Subsection (a).

[Reserves Sections 953.106-953.150 for expansion.]

SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

Sec. 953.151. COMPANY REQUIREMENTS. (a) Prohibits a company from selling, offering for sale, or issuing a legal service contract in this state unless the company gives the legal service contract holder a receipt for, or other written evidence of, the purchase of the contract and a copy of the legal service contract.

(b) Requires a company to perform the services as stated in the legal service contract.

Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. Authorizes a company to issue group legal service contracts. Requires a company to provide a legal service contract holder who obtains a group contract with a document that describes the company's services and complies with the requirements of this chapter.

Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. Requires a contracting attorney to be licensed in the jurisdiction in which the legal services are performed, be in good standing with the entity that licenses attorneys in that jurisdiction and maintain professional liability and errors and omissions insurance with minimum annual limits of \$100,000 for each occurrence and \$300,000 in the aggregate.

Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES PROHIBITED. Prohibits a company from interfering with the attorney-client relationship or with the contracting attorney's independent exercise of professional judgment.

Sec. 953.155. COMPANY RECORDS. (a) Requires a company to maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. Requires a company's records to include certain information.

(b) Authorizes the records required by this section to be maintained in an electronic medium or through other recordkeeping technology. Requires a company to be able to reformat the record into a legible hard copy at the request of the executive director, if a record is not in a hard copy.

(c) Requires a company to retain the records required by this section until at least the second anniversary of the termination date of the specified period of coverage under the legal service contract, except as provided by Subsection (d).

(d) Requires a company that discontinues business in this state to retain its records until the company furnishes the executive director with proof satisfactory to the executive director that the provider has discharged all obligations to legal service contract holders in this state.

Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED DISCLOSURES. (a) Requires a legal service contract to be filed with the executive director before it is marketed, sold, offered for sale, administered, or issued in this state. Requires any subsequent endorsement or attachment to the contract to also be filed with the executive director before the endorsement or attachment is delivered to legal service contract holders.

(b) Requires a legal service contract marketed, sold, offered for sale, administered, or issued in this state to meet certain requirements.

Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. Authorizes a legal service contract holder to terminate the legal service contract if the legal service contract holder provides the company with written notice of the legal service contract holder's intention of terminating the contract not later than the seventh day after the date the legal service contract holder receives the contract.

Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) Provides that if a legal service contract holder terminates a legal service contract in accordance with Section 953.157 and the holder has not sought legal services under the contract before the contract is terminated, the contract is void.

(b) Authorizes a legal service contract holder to void the legal service contract at a later time as provided by the contract.

(c) Requires a company to refund to the legal service contract holder or credit to the account of the legal service contract holder the full purchase price of the contract, if a legal service contract is voided. Provides that if the company does not pay the refund or credit the legal service contract holder's account before the 46th day after the date the contract is voided, the company is liable to the legal service contract holder for a penalty each month an amount remains outstanding. Provides that the monthly penalty may not exceed 10 percent of the amount outstanding.

(d) Provides that the right to void a legal service contract is not transferable.

Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) Authorizes a company to cancel a legal service contract by mailing a written notice of cancellation to the legal service contract holder at the legal service contract holder's last known address according to the records of the company. Requires a company to mail the notice before the fifth day preceding the effective date of the cancellation. Requires the notice to state the effective date of the cancellation and the reason for the cancellation.

(b) Provides that a company is not required to provide prior notice of cancellation if the legal service contract is canceled due to certain circumstances.

Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) Prohibits a company from using a name that includes "insurance," "casualty," "surety," or "mutual" or any other word descriptive of the insurance, casualty, or surety business or is deceptively similar to the name or description of an insurance or surety corporation or to the name of any other company.

(b) Provides that this section does not apply to a company that, before September 1, 2003, included a word prohibited under this section in its name. Requires a company described by this subsection to include in each legal service contract a statement substantially similar to the following: "This agreement is not an insurance contract."

Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. Prohibits a company, a sales representative, or a representative of a sales representative, in the company's contracts or marketing to make, permit, or cause to be made any false or misleading statement or deliberately omit a material statement if the omission would be considered misleading.

Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF ADMINISTRATOR. (a) Authorizes a company to appoint an administrator or designate a person to be responsible

for all or any part of the administration or sale of legal service contracts and compliance with this chapter.

- (b) Authorizes the executive director to adopt rules regarding the registration of an administrator with the department.

[Reserves Sections 953.163-953.200 for expansion.]

SUBCHAPTER E. DISCIPLINARY ACTION

Sec. 953.201. **DISCIPLINARY ACTION.** Authorizes the executive director to impose an administrative sanction, including any administrative penalty, as provided by Chapter 51 on a finding that a ground for disciplinary action exists under this chapter.

Sec. 953.202. **EMERGENCY CEASE AND DESIST ORDER.** (a) Authorizes the executive director to issue an emergency cease and desist order to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public.

- (b) Authorizes the executive director to issue the emergency cease and desist order without notice and hearing if the executive director determines that an immediate issuance is necessary under the circumstances.

- (c) Requires the executive director to set the time and place for a hearing to affirm, modify, or set aside an emergency cease and desist order that was issued without a hearing.

Sec. 953.203. **INJUNCTIVE RELIEF; CIVIL PENALTY.** (a) Authorizes the executive director to institute an action against a company or sales representative for injunctive relief under Section 51.352 to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

- (b) Authorizes the executive director to institute an action for a civil penalty as provided by Section 51.352, in addition to the injunctive relief provided by Subsection (a).

Sec. 953.204. **ADMINISTRATIVE PROCEDURE.** Provides that Sections 51.310, 51.353, and 51.354 apply to a disciplinary action taken under this chapter.

Sec. 953.205. **APPEAL.** Authorizes a person affected by a ruling, order, decision, or other action of the executive director or department to appeal by filing a petition in a district court in Travis County.

SECTION 2. Amends Article 5.13-1, Insurance Code, by adding Subsection (h) to prohibit an insurer from issuing a prepaid legal service contract under this article after March 1, 2004.

SECTION 3. Amends Section 951.003(b), Occupations Code, to provide that a law pertaining to legal service contracts under Chapter 953 or insurance does not apply to a program under this chapter.

SECTION 4. (a) Provides that Chapter 953, Occupations Code, as added by this Act, applies only to a legal service contract entered into on or after March 1, 2004, or a legal service contract entered into before March 1, 2004, that meets the requirements of Subsection (c) of this section.

(b) Provides that a person regulated under Chapter 953, Occupations Code, as added by this Act, is not required to comply with that chapter until March 1, 2004, but may implement the requirements of that chapter before March 1, 2004. Provides that the failure of a legal service contract company or other person to comply with Chapter 953, Occupations Code, as added by this Act, or otherwise to administer a legal service contract plan in the manner required by that chapter before March 1, 2004, is not admissible in any court, arbitration, or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected legal service contract was unlawful or otherwise improper.

(c) Authorizes the Texas Department of Licensing and Regulation and the Texas Department of Insurance to enter into a memorandum of understanding for a transition plan to transfer the regulation of legal service contracts from the Texas Department of Insurance to the Texas Department of Licensing and Regulation. Requires the transition plan to meet certain minimum standards.

SECTION 5. Effective date: September 1, 2003.